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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 PATRICIA A. F.,¹

12 Plaintiff,

13 v.

14 ANDREW M. SAUL, Commissioner
15 of Social Security,

16 Defendant.
17

Case No. 5:19-cv-00195 AFM

**MEMORANDUM OPINION AND
ORDER REVERSING AND
REMANDING DECISION OF
THE COMMISSIONER**

18 Plaintiff seeks review of the Commissioner's final decision denying her
19 application for Social Security disability insurance benefits. In accordance with the
20 Court's case management order, the parties have filed briefs addressing the merits of
21 the disputed issues. This matter is now ready for decision.

22 **BACKGROUND**

23 Plaintiff filed an application for Social Security disability insurance benefits
24 on November 17, 2014, claiming a disability onset date of October 29, 2014.
25 (Administrative Record ("AR") 125, 209.) Her claim was initially denied on
26

27 ¹ Plaintiff's name has been partially redacted in accordance with Federal Rule of Civil Procedure
28 5.2(c)(2)(B) and the recommendation of the Committee on Court Administration and Case
Management of the Judicial Conference of the United States.

1 April 29, 2015 and upon reconsideration. (AR 141-145.) Plaintiff testified at a
2 hearing held on September 5, 2017. (AR 44-104.) Also testifying was a vocational
3 expert (“VE”). (AR 44-104.) On February 28, 2018, Plaintiff was notified of an
4 unfavorable decision by the ALJ. (AR 14-33.) The Appeals Council denied review,
5 making the ALJ’s decision the Commissioner’s final decision. (AR 1-4.)

6 **DISPUTED ISSUES**

- 7 1. Whether the ALJ properly evaluated the medical evidence of record.
- 8 2. Whether the ALJ properly evaluated Plaintiff’s subjective symptom
9 complaints.

10 **STANDARD OF REVIEW**

11 Under 42 U.S.C. § 405(g), the Court reviews the Commissioner’s decision to
12 determine whether the Commissioner’s findings are supported by substantial
13 evidence and whether the proper legal standards were applied. *See Treichler v.*
14 *Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1098 (9th Cir. 2014). Substantial
15 evidence means “more than a mere scintilla” but less than a preponderance. *See*
16 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Lingenfelter v. Astrue*, 504 F.3d
17 1028, 1035 (9th Cir. 2007). The Court reviews the record as a whole, weighing both
18 the evidence that supports and the evidence that detracts from the Commissioner’s
19 conclusion. *Lingenfelter*, 504 F.3d at 1035. Where evidence is susceptible of more
20 than one rational interpretation, the Commissioner’s decision must be upheld. *See*
21 *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007); *Batson v. Comm’r of the Soc. Sec.*
22 *Admin.*, 359 F.3d 1190, 1196 (9th Cir. 2004) (“When evidence reasonably supports
23 either confirming or reversing the ALJ’s decision, [the court] may not substitute [its]
24 judgment for that of the ALJ.”).

25 **DISCUSSION**

26 Plaintiff contends that the ALJ failed to properly evaluate her credibility and
27 subjective complaints.
28

1 **A. Relevant Law**

2 Where, as here, a claimant has presented evidence of an underlying impairment
3 that could reasonably be expected to produce pain or other symptoms, the ALJ must
4 “evaluate the intensity and persistence of [the] individual’s symptoms . . . and
5 determine the extent to which [those] symptoms limit his . . . ability to perform work-
6 related activities” SSR 16-3p, 2016 WL 1119029, at *4. Absent a finding that
7 the claimant is malingering, an ALJ must provide specific, clear and convincing
8 reasons before rejecting a claimant’s testimony about the severity of his symptoms.
9 *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017) (citing *Garrison v. Colvin*,
10 759 F.3d 995, 1014-1015 (9th Cir. 2014)).

11 “General findings [regarding a claimant’s credibility] are insufficient; rather,
12 the ALJ must identify what testimony is not credible and what evidence undermines
13 the claimant’s complaints.” *Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014)
14 (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)). The ALJ’s findings
15 “must be sufficiently specific to allow a reviewing court to conclude the adjudicator
16 rejected the claimant’s testimony on permissible grounds and did not arbitrarily
17 discredit a claimant’s testimony regarding pain.” *Brown-Hunter v. Colvin*, 806 F.3d
18 487, 493 (9th Cir. 2015) (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 345-346 (9th
19 Cir. 1991) (en banc)). Factors an ALJ may consider when making such a
20 determination include the objective medical evidence, the claimant’s treatment
21 history, the claimant’s daily activities, unexplained failure to pursue or follow
22 treatment, and inconsistencies in testimony. See *Ghanim v. Colvin*, 763 F.3d 1154,
23 1163 (9th Cir. 2014); *Molina v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012).

24 **B. Analysis**

25 The ALJ summarized Plaintiff’s allegations as including irritable bowel
26 disease, degenerative disc disease of the back, stenosis of the spine, pituitary tumor
27 in the brain, severe migraine headaches, polycythemia, frozen shoulder
28 injury/inflammation, problems with both hands, pain in the fingers and wrists, low

1 blood oxygen, and type 2 diabetes. (AR 21.) The ALJ also summarized Plaintiff's
2 testimony that she stopped working due to irritable bowel issues, has issues with her
3 back and standing, cannot sit or stand for very long, has neck pain every other day,
4 has daily lower back pain, has a frozen right shoulder impingement, has had right
5 shoulder surgery, has problems reaching and cannot raise her shoulder over her head,
6 does not use her computer because of problems with her right and left hands, can lift
7 and carry a maximum of approximately five to ten pounds, and has daily headaches.
8 (AR 21-22.) The ALJ found that Plaintiff's symptoms were reasonably likely to be
9 caused by her medically determined impairments but that the statements concerning
10 the intensity, persistence and limiting effects of these symptoms are not entirely
11 consistent with the medical evidence and other evidence in the record. (AR 21-22.)
12 In discounting Plaintiff's claimed symptoms, the ALJ provided two reasons – as
13 discussed below.

14 1. Inconsistency with Daily Activities

15 The ALJ found that Plaintiff's daily activities were not consistent with her
16 claimed symptoms, particularly her difficulty sitting and standing. (AR 22.) In
17 reaching this conclusion, the ALJ relied on information including an adult function
18 report completed by Plaintiff (AR 260-271) and Plaintiff's testimony at the hearing
19 (AR 49-104). In the report, Plaintiff wrote that she lived alone and was "[u]nable to
20 drive long distances due to severe degenerative disc disease, and unable to walk at
21 times due to this problem." (AR 263.) She also wrote that she can shower, get
22 dressed, and feed her dogs, but that other people cleaned up after the dogs. (AR 264.)
23 She further reported that when she has severe back pain, she cannot lift her leg which
24 impacts her dressing, bathing, and use of the toilet, and her shoulder pain impacts her
25 ability to care for her hair. (AR 264.) Relating to house and yard work, Plaintiff wrote
26 that she was able to do laundry and some cleaning, but only did so about once a week
27 and needed help for dusting and vacuuming. (AR 265.) Plaintiff reported shopping
28 only once a week for 30 to 45 minutes. (AR 266.) As for hobbies and interests,

1 Plaintiff reported that she read and watched television but that her hobbies were
2 affected by her physical impairments because she “can’t always get up from the
3 chair.” (AR 267.) Furthermore, she had great difficulties standing, reaching, walking,
4 sitting, and climbing stairs due to chronic pain and was unable to use hands for more
5 than 2 hours. (AR 268.) In Plaintiff’s appeal disability report, she reported increased
6 pain that made her unable to stand/walk at times. (AR 300.) She further reported that
7 her daily activities had changed such that she “can do very little for [herself] and
8 rel[ies] on family and friends for assistance.” (AR 308.)

9 At the administrative hearing, Plaintiff testified that she “couldn’t always stand
10 for very long, or sit” (AR 54), had neck pain every other day, really bad” lower back
11 pain daily, and driving, vacuuming, and mopping exacerbate this pain. (AR 66-68.)
12 As for her postural limitations, Plaintiff testified that sitting is “not always”
13 comfortable and that when driving for work she would often pull over and get out of
14 the car. (AR 69.) She testified that she drives to “pick up prescriptions like maybe
15 every couple weeks,” buys food “[a] couple times a month” at a store two blocks
16 away, goes to “Costco for [her] prescriptions,” and “drive[s] to [her] mom’s” in West
17 Covina “maybe once every couple weeks,” which is about an hour drive, although a
18 recent drive time increase has made her drive less often. (AR 74-75.) She blamed her
19 inability to drive long distances on a combination of back pain, irritable bowel
20 syndrome, headaches, eye sight at night, and more. (AR 75.) As for other daily
21 activities, Plaintiff testified that she could not raise her shoulder over her head and
22 that she did not use the computer at home because of her arthritis in both hands. (AR
23 59.) She also testified that she lived alone and had to get help from her friends and
24 family for errands. (AR 69.) She explained her attempts at household chores as
25 follows: “I get up. I feed my dogs. And clean the bathrooms, take a shower. Wash
26 clothes if I have to wash clothes. I don’t wash clothes, maybe every two weeks. I
27 don’t do a lot if I – I don’t vacuum every day. If I need to – you know, I vacuum
28 when I can.” (AR 73-74.) She stated that while she tries to do activities frequently,

1 she cannot always do so because it aggravates her back. (AR 69.) Plaintiff testified
2 to being able to carry maybe five to ten pounds and that recently when trying to carry
3 two two-liter soda bottles, she could not do so because she “didn’t want to hurt [her]
4 back.” (AR 71-72.)

5 Based on the foregoing, the ALJ determined that Plaintiff’s daily activities
6 were inconsistent with her subjective symptom allegations:

7 Despite alleging difficulty standing and sitting, the claimant testified
8 that she feeds her dogs, can clean the bathrooms, can take a shower, and
9 can wash her clothes. She further indicated that she can vacuum at times.
10 She further testified that she drives and picks up her prescription
11 medications every couple of weeks and is able to buy food a couple
12 times a month from the grocery store. She also indicated that she drives
13 to her mother’s house in West Covina, California, once every couple of
14 weeks, a drive which approximately one hour. Lastly, the claimant lives
15 alone, which suggests that she has some capability to independently
16 perform activities of daily living.

17 (AR 22.)

18 In challenging this determination, Plaintiff asserts two main points: First, she
19 contends that it was improper for the ALJ to rely on her daily activities because those
20 activities were not transferable to a work setting. However, as the Commissioner
21 points out, daily activities can be used in two ways. They may be evidence of skills
22 that are transferable to a work setting. In addition, as here, daily activities may be
23 relevant to an assessment of Plaintiff’s testimony where the activities are allegedly
24 inconsistent with that testimony. *See Burkett v. Berryhill*, 732 F. App’x 547, 552 (9th
25 Cir. 2018) (“While transferability of skills to a work setting is one way in which an
26 ALJ may consider a claimant’s daily activities, an ALJ may also discount claimant
27 testimony where reported daily activities contradict the claimant’s alleged extent of
28 her limitations.”); *Orn*, 495 F.3d at 639 (same).

1 Second, Plaintiff contends that the ALJ improperly “cherry picked” evidence
2 to support the adverse finding regarding Plaintiff’s subjective symptom complaints
3 and that the ALJ did not explain how Plaintiff’s daily activities were inconsistent
4 with her claimed symptoms. The Court finds that these contentions have merit.

5 In *Reddick v. Chater*, the Ninth Circuit held that an ALJ erred when he
6 “developed his evidentiary basis by not fully accounting for the context of materials
7 or all parts of the testimony and reports. His paraphrasing of record material is not
8 entirely accurate regarding the content or tone of the record.” 157 F.3d 715, 722-723
9 (9th Cir. 1998). As in *Reddick*, the ALJ’s paraphrase of the record here concerning
10 daily activities did not fully and fairly account for Plaintiff’s testimony and her
11 claimed symptoms. Plaintiff testified that she could not always stand for very long or
12 sit. (AR 54.) Likewise, regarding driving, vacuuming, and mopping, Plaintiff
13 testified that she could not do these activities at all times because they intensified the
14 pain in her back. Because of pain from sitting during driving, she would have to pull
15 over and get out of the car if possible. (AR 66-72.) While Plaintiff reported that she
16 could sometimes drive to her mother’s (approximately once every couple of weeks
17 (AR 75)), she did not state she could drive there without stopping and walking around
18 during the trip because of pain. (AR 69-70.) And although Plaintiff did household
19 chores at times, she also testified that at other times she could not do those chores –
20 thus indicating that she could perform chores on days when she was in less pain. (AR
21 69.)

22 Moreover, examined as a whole, the record and the ALJ decision do not reflect
23 how Plaintiff’s limited activities – such as, at times, being able to feed a dog, shower,
24 vacuum, and wash her clothes – are inconsistent with her claim that she has difficulty
25 standing and sitting. *See generally Reddick*, 157 F.3d at 722 (“disability claimants
26 should not be penalized for attempting to lead normal lives in the face of their
27 limitations”). These activities involve standing for a relatively brief period, and
28 Plaintiff testified that she could not engage in them on days when her pain was worse.

1 Similarly, Plaintiff's driving was limited due to back pain from sitting, and it required
2 her to stop and get out of her car to alleviate the pain. Instead of providing an analysis
3 and resolution of these issues, the ALJ simply stated a conclusion and then recited a
4 broad-brush summary of Plaintiff's activities. That does not constitute a specific,
5 clear and convincing reason. *See Brown-Hunter*, 806 F.3d at 493-494.

6 2. Not Supported by Objective Medical Evidence

7 The ALJ also determined that Plaintiff's subjective symptom claims were not
8 consistent with the objective medical evidence. (AR 22.) While "medical evidence is
9 still a relevant factor in determining the severity of the claimant's pain and its
10 disabling effects," *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001), an ALJ
11 may not discredit an individual's statements about the intensity, persistence, and
12 limiting effects of symptoms solely because the objective medical evidence does not
13 substantiate the impairment alleged by the individual. *See Burch v. Barnhart*, 400
14 F.3d 676, 681 (9th Cir. 2005). The Court therefore cannot affirm the ALJ's adverse
15 finding regarding Plaintiff's subjective symptom testimony on that ground alone –
16 even its accepts the Commissioner's view of the record.

17 * * *

18 In sum, the Court finds that the ALJ erred by failing to provide an adequate
19 reason for discrediting Plaintiff's subjective symptom claims.²

20 REMEDY

21 "When the ALJ denies benefits and the court finds error, the court ordinarily
22 must remand to the agency for further proceedings before directing an award of
23 benefits." *Leon v. Berryhill*, 880 F.3d 1041, 1045 (9th Cir. 2018). Indeed, Ninth
24 Circuit case law "precludes a district court from remanding a case for an award of
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26 ² In light of the decision to remand on this ground, the Court declines to address the remaining
27 issue raised by Plaintiff. *See Hiler v. Astrue*, 687 F.3d 1208, 1212 (9th Cir. 2012) ("Because we
28 remand the case to the ALJ for the reasons stated, we decline to reach [Plaintiff's] alternative
ground for remand.").

1 benefits unless certain prerequisites are met.” *Dominguez v. Colvin*, 808 F.3d 403,
2 407 (9th Cir. 2016) (citations omitted). “The district court must first determine that
3 the ALJ made a legal error, such as failing to provide legally sufficient reasons for
4 rejecting evidence. . . . If the court finds such an error, it must next review the record
5 as a whole and determine whether it is fully developed, is free from conflicts and
6 ambiguities, and all essential factual issues have been resolved.” *Dominguez*, 808
7 F.3d at 407 (citation and internal quotation marks omitted).

8 Although the Court has found error as discussed above, the record on the whole
9 is not fully developed, and factual issues remain outstanding. The issues concerning
10 Plaintiff’s alleged disability “should be resolved through further proceedings on an
11 open record before a proper disability determination can be made by the ALJ in the
12 first instance.” *See Brown-Hunter*, 806 F.3d at 496; *see also Treichler*, 775 F.3d at
13 1101 (remand for award of benefits is inappropriate where “there is conflicting
14 evidence, and not all essential factual issues have been resolved”) (citation omitted);
15 *Strauss v. Comm’r of the Soc. Sec. Admin.*, 635 F.3d 1135, 1138 (9th Cir. 2011) (same
16 where the record does not clearly demonstrate the claimant is disabled within the
17 meaning of the Social Security Act). Accordingly, the appropriate remedy is a
18 remand for further administrative proceedings pursuant to sentence four of 42 U.S.C.
19 § 405(g). It is not the Court’s intent to limit the scope of the remand.

20 ORDER

21 IT THEREFORE IS ORDERED that Judgment be entered reversing the
22 decision of the Commissioner of Social Security and remanding this matter for
23 further administrative proceedings consistent with this opinion.

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25 DATED: 12/13/2019

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ALEXANDER F. MacKINNON
UNITED STATES MAGISTRATE JUDGE